



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,947	12/21/2000	Marc S. Lemchen	P946	2376
79782	7590	08/18/2009		
Law Offices of Daniel L. Dawes 5200 Warner Blvd, Ste. 106 Huntington Beach, CA 92649			EXAMINER DOAN, DUYN MY	
			ART UNIT 2452	PAPER NUMBER
			MAIL DATE 08/18/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARC S. LEMCHEN

Application No. 09/746,947
Appeal No. 2008-001582
Technology Center 2100

Mailed: August 18, 2009

Before DALE M. SHAW, *Deputy Chief Appeals Administrator*,

ORDER REMANDING TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on Jan. 24, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below:

APPEAL BRIEF and APPEALED CLAIMS

Appellant has not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 1, 13, 25-26. The rejected claims that have not been appealed and/or argued for appeal are claims 10-12 and 22-24. In addition, claims 2-9 and 14-21 were canceled in an amendment filed June 9, 2006, leaving claims 1, 10-13, and 22-26 up for review on appeal as indicated in the Final Rejection mailed September 8, 2006 and the Examiner's Answer mailed July 19, 2007. It is not clear if claims 10-12 and 22-24 are still part of the appeal according to section (iii) Status of Claims on page 1 of the Appeal Brief. Clarification is needed.

DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 6, Sept 2007).

Accordingly, it is ORDERED that the application is remanded to the Examiner:

- 1) to cancel claims 10-12 and 22-24;
- 2) upon entry of the paper, canceling claims 10-12, and 22-24, to return the application to the Board for the consideration of the claims on appeal; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/rwk

cc: Law Offices of Daniel L. Dawes
5200 Warner Blvd, Ste. 106
Huntington Beach CA 92649